

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period August 1 through October 3, 2018, causally related to her accepted June 15, 2018 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 28, 2018 appellant then a 43-year-old nursing assistant filed a Form CA-1 alleging that on June 15, 2018 she slipped on spilled coffee and fell while in the performance of duty. She contended that she reinjured her left knee, left hip, left elbow, left shoulder, neck, and back. OWCP assigned the claim OWCP File No. xxxxxx131.⁵

In a June 19, 2018 report, Dr. Daniel B. Brubaker, an osteopath, noted that appellant had experienced a second fall at work.

In a July 9, 2018 report, Dr. Brubaker described appellant's history of injury on June 15, 2018 and noted that she was on modified sedentary duty due to her accepted left meniscal tear and lumbosacral radiculopathy when the second incident occurred.⁶ He diagnosed cervical spine strain/sprain, cervical muscle spasm, cervicgia, possible annular disc tears, thoracic spine strain, spasm, and pain, and possible annular disc tear of the thoracic spine. Dr. Brubaker recommended magnetic resonance imaging (MRI) scans to confirm whether appellant had annular disc tears in her cervical and thoracic region. He indicated that she was totally disabled until July 31, 2018. In a July 30, 2018 note, Dr. Brubaker opined that appellant was totally disabled from July 30 through August 30, 2018 due to her cervical and thoracic back pain and possible disc tears. In a report of even date, he indicated that appellant was continuing to work in her sedentary job.

³ 5 U.S.C. § 8101 *et seq.*

⁴ Docket No. 19-0953 (issued October 7, 2019).

⁵ Appellant has two prior claims. On November 3, 2014 appellant filed a Form CA-1 alleging that she sustained a right wrist sprain on October 30, 2014 when a patient kicked her in the right wrist while she was in the performance of duty. That claim was administratively closed. On May 26, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2016 she sustained a left knee injury when her left knee struck a stairway wall during an evacuation drill while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx726 and, on August 18, 2016, accepted it for lumbosacral radiculopathy and left knee cystic meniscus. Beginning July 10, 2016, it paid her wage-loss compensation on the supplemental rolls and, effective December 10, 2016, placed her on the periodic compensation rolls. On September 5, 2017 appellant returned to full-time, limited-duty work.

⁶ Dr. Brubaker recommended both lumbar and left knee surgeries for the previously accepted conditions.

On August 15, 2018 OWCP accepted the June 15, 2018 traumatic injury claim for cervical sprain, thoracic sprain, and muscle spasm.

On August 27, 2018 appellant filed a claim for compensation (Form CA-7) requesting leave without pay compensation for disability from work from August 1 through August 27, 2018.

In a September 12, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence required and afforded her 30 days to respond.

On August 23, 2018 Dr. Brubaker reviewed appellant's history of injury on June 15, 2018, conducted an examination and repeated his diagnoses. He recounted that appellant reported that she was physically unable to continue her modified duties. Dr. Brubaker found that appellant was totally disabled from work August 30 through December 31, 2018.

On October 3, 2018 appellant filed a Form CA-7 claim for wage-loss compensation for disability from work for the period August 23 through October 3, 2018.

In an October 4, 2018 report, Dr. Brubaker reviewed appellant's left knee and back MRI scans and reported no significant findings. He recounted that appellant reported frequent falling and a high pain level, which did not correlate with her diagnostic studies. Dr. Brubaker continued to support appellant's total disability through November 5, 2018.

In an October 10, 2018 report, Dr. Robert R. McIvor, Board-certified orthopedic surgeon,⁷ reviewed appellant's medical history and recommended left knee surgery. He completed a work capacity evaluation and provided restrictions including walking two hours, standing three hours, and one hour of bending and stooping. Dr. McIvor found appellant could not squat, kneel, or climb. He limited appellant's pushing, pulling, and lifting to 15 pounds, no more than one hour per day.

On November 5, 2018 Dr. Brubaker found that appellant had no evidence of disc pathology in her cervical or thoracic spine. He opined that appellant either exaggerated her pain or had an extremely low pain tolerance. Dr. Brubaker concluded that appellant's cervical and thoracic conditions had resolved and that she could return to her sedentary job due to her accepted lumbar and left knee conditions.

By decision dated March 13, 2019, OWCP denied appellant's claim for disability for the period August 1 through October 3, 2018. On March 19, 2019 appellant, through counsel, requested an oral hearing from a representative of OWCP's Branch of Hearings and Review.

During the hearing held on July 17, 2019, appellant testified that when she returned to work in January 2019, following the June 15, 2018 employment injury, the employing establishment

⁷ Dr. McIvor was designated as an impartial medical adviser to resolve a conflict of medical opinion regarding appellant's need for surgical treatment of her back and left knee due to the accepted May 12, 2016 employment injuries.

required additional work duties including making beds. Appellant asserted that she had been totally disabled from work since August 1, 2018.

By decision dated September 30, 2019, OWCP's hearing representative affirmed the March 13, 2019 denial of appellant's claim for disability compensation, finding that she had not met her burden of proof to establish that she was totally disabled from work beginning August 1, 2018 due to her accepted cervical and thoracic sprains.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁸ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁹ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁰

Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹¹ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.¹² The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought. For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹³

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁴ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

⁸ *Supra* note 3.

⁹ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

¹¹ *Id.*; *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹² *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

¹³ *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁴ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁵

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period August 1 through October 3, 2018, causally related to her accepted June 15, 2018 employment injury.

In support of her claims for compensation, appellant submitted reports from Dr. Brubaker beginning July 9 through August 23, 2018 describing her history of injury on June 15, 2018. Dr. Brubaker diagnosed cervical spine strain/sprain, cervical muscle spasm, cervicgia, possible annular disc tears, thoracic spine strain, spasm, and pain, and possible annular disc tear of the thoracic spine. He determined that appellant was totally disabled through December 31, 2018 due to the diagnosed cervical and thoracic conditions. The Board finds that these reports lack sufficient probative value to establish employment-related disability during the period claimed. Dr. Brubaker did not discuss how the accepted employment injury was competent to cause disability during the claimed periods. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁷ As such, these reports are insufficient to establish appellant's claim for compensation.

On August 23, 2018 Dr. Brubaker recounted that appellant continued to report that she was physically unable to continue her modified duties. This note is insufficient to meet appellant's burden of proof to establish a period of disability as Dr. Brubaker did not provide an opinion that appellant was totally disabled, instead he relied on appellant's assessment of her condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁸ Therefore, this note is also insufficient to establish appellant's claim for compensation.

Likewise, in his October 4 and November 5, 2018 reports, Dr. Brubaker did not provide an opinion on the causal relationship between appellant's claimed disability and her accepted June 15,

¹⁵ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁶ *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁷ *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁸ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

2018 employment injury. Accordingly, these reports are also of no probative value and are insufficient to establish appellant's claim for compensation.¹⁹

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.²⁰ Because the medical opinion evidence of record is insufficient to establish employment-related disability during the period August 1 through October 3, 2018 as a result of her accepted cervical and thoracic conditions, the Board finds that she has not met her burden of proof to establish her claim for disability compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period August 1 through October 3, 2018, causally related to her accepted June 15, 2018 employment injury.

¹⁹ *Id.*; see also *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

²⁰ *Supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board